



The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

CHAPTER 8—ACQUISITION, BUYOUTS, & RELOCATION

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CHAPTER 8—ACQUISITION & RELOCATION

8.MIT CDBG-MIT Guidance

CDBG-MIT provides funding for communities to implement acquisition and relocation activities that remove properties from flood prone areas. These activities support hazard mitigation, further floodplain management goals, and foster resiliency by funding buyout and relocation programs that remove homeowners from a floodplain. Vulnerability to future flood damage and injury may be substantially mitigated by removing homes from a disaster-prone floodplain. The land acquired through a buyout program must either revert to a natural floodplain, be converted into a water retention area, be retained as green space for recreational purposes, or become a component of an ecosystem restoration or wetlands management system. The buyout and relocation activity serves multiple objectives and provides a resilient alternative to elevating and rebuilding within a floodplain, reducing repetitive loss and lowering risk to human health and safety. Additionally, buyouts conducted in a timely manner relieve homeowners from investing in costly repairs in properties that they then may not want to sell.

8.1 Introduction and Purpose

CDBG-DR funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.* (the “URA”), and the federal regulations found in 49 C.F.R. Part 24 (see also section 104(d) of the Housing and Community Development Act of 1974 and implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD funded programs). The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition of real property for any phase of a federal or federally funded project. The URA also establishes equitable land acquisition policies. See GLO Regulatory Information—URA in [Resources](#)—Resource 8.1 for additional information.

Acquisition is typically associated with another eligible activity where the end use of the acquired property meets a CDBG National Objective. A subrecipient may also create housing Buyout or Acquisition Programs. A Buyout Program (“Buyouts”), encompasses the purchase of eligible properties within a floodway, floodplain, or designated Disaster Risk Reduction Area (“DRRA”). Once a property is acquired, it is then converted in perpetuity to green space, wetland management, or flood plain management. An Acquisition Program (“Acquisitions”), includes the acquisition of eligible disaster-damaged properties to ultimately be used to satisfy a HUD national objective. In short, a Buyout Program focuses on removing development from harm’s way by making it permanent green space and not subject to development or other uses inconsistent with green space.



A subrecipient choosing to administer a Buyout or Acquisition Program shall create Housing Guidelines using the GLO-CDR's Buyout and Acquisition Guidelines Checklist posted on the GLO-CDR website and submit them for GLO-CDR approval. A link to the checklist is available in [Resources](#)—Resource 8.2 at the end of this chapter. All guidelines must be available locally for a thirty-day comment period and may be a benchmark in the subrecipient contract.

Relocation requirements of the URA are discussed in the Relocation Guidelines available on the HUD website (see [Resources](#)—Resource 8.3).

Additionally, HUD's Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018), for Harvey Grants can be found at the end of this chapter.

The purpose of the URA is:

- To ensure owners of real property acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs;
- To ensure persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently, and equitably and do not suffer disproportionate injuries as a result of projects that benefit the public; and
- To ensure acquiring/condemning authorities implement these regulations in an efficient and cost-effective manner.

The URA is triggered when real property acquisition related a CDBG-DR project is contemplated or persons are to be displaced as a direct result of acquisition, demolition, and rehabilitation at any phase of a federally funded project.

General Requirements

HUD Handbook 1378 provides thorough guidance on real property acquisition under the URA. If there are questions whether any of the following apply to a specific situation, please consult your GLO Grant Manager.

Acquisition rules apply any time an acquiring entity:

- Undertakes the purchase of property directly;
- Provides a nonprofit or for-profit entity with funds to purchase the property;
- Hires an agent or consultant to act on its behalf in acquisition;
- Undertakes acquisition on or after a CDBG-DR A application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity; or



- Undertakes an acquisition before the application submission date and the acquisition were intended to support a subsequent CDBG-DR activity.

Property owners must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their property, even if they are a direct beneficiary of the project. Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the agreed purchase price to the owner. An Acquisition Program allows for properties to be acquired—using the post disaster fair market value—and to be redeveloped in a resilient manner.

If the acquisition is only a portion of a property but would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

8.2 Environmental and Acquisition

Executing a contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a commitment of funds and a choice limiting action (24 CFR 58.22(a)) and must be avoided until after the environmental review process is completed and GLO-CDR has issued a release of funds. Any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. There is one action that may be taken before the environmental release of funds that might conclude the acquisition once the environmental review process is completed: an option contract. This type of contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

HUD's regulations at 24 CFR 58.22(d) allow for an option contract agreement for any proposed project site prior to the completion of the environmental review when the following requirements are met:

- Option agreement specifically states it is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option is a nominal portion of the purchase price.

8.3 Terms and Definitions

Acquiring Entity / Acquiring Agency

The term “acquiring entity” and “acquiring agency” are used interchangeably and refer to the entity (in most cases, the subrecipient) performing the acquisition or under whose authority the acquisition is performed. Ultimately, the subrecipient is responsible for ensuring compliance with all URA requirements. This does not prevent another entity such as a water supply corporation or third-party



non-profit from acquiring real property for the grant-funded project. URA rules are applicable to projects with any amount of CDBG participation regardless of the type of entity completing the acquisition activity or the source of funds being used in the transaction.

Acquisition

Purchase of eligible, disaster damaged property to be utilized to meet a HUD National Objective.

Buyout

Purchase of eligible properties within a floodway, floodplain, or designated Disaster Risk Reduction Area (DRRA). Once a property is acquired in a Buyout program, it is then converted in perpetuity to green space, wetland management, or flood plain management.

Eminent Domain

Eminent domain refers to the power of the government to take private property and convert it to public use. Constitutional protections require just compensation be paid for any private property converted to public use.

Important Note: The State of Texas' eminent domain authority is delegated by statute to state agencies, political subdivisions (cities, counties, and special districts) and certain private entities. Governmental entities have eminent domain authority over properties that are located both inside and outside their taxing jurisdiction. All municipalities in Texas (home rule, general law, and special law) are provided the authority of eminent domain under section 251.001 of the Local Government Code; authority for counties to exercise eminent domain is found in section 261.001 of the Local Government Code. Section 49.222 of the Texas Water Code confers water districts and water supply corporations with eminent domain authority to acquire land, easements, or other property necessary for water, sanitary sewer, storm drainage, or control purposes. However, section 2206.001 of the Government Code limits the eminent domain authority of governmental and private entities for acquisition that confers a private benefit on a private party or for economic development purposes, unless economic development is a secondary purpose resulting from a municipal community development or municipal urban renewal activities to eliminate slum or blight as provided by applicable provisions of the Local Government Code.

Condemnation

Condemnation refers to the legal process used for taking property under the authority of eminent domain. The use of the term should not be confused with its use in declaring a property to be uninhabitable or unsafe.



Real Property

All public improvements or activities related to an eligible CDBG-DR and/or CDBG-MIT project must be constructed on public property, owned by the subrecipient, or recorded as a right-of way or easement. Public property extends to that owned by WSCs or non-profits performing public purposes on behalf of the subrecipients through a binding agreement. Real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property.

Acquisition rules apply to CDBG-DR and/or CDBG-MIT projects in the following situations:

- Fee simple title to the property is acquired;
- Permanent and temporary easements necessary for the project are acquired;
- Properties subject to a life estate or a life use are acquired; or
- Property that is leased for a term of 15 years or more is acquired. Note that a lease term for less than 15 years does not satisfy HUD's standard for real property acquisition and would, therefore, not meet the CDBG-DR program 'interest in property' requirement.

Improvements constructed on property that is not publicly owned or recorded as a right-of-way or easement are not eligible CDBG-DR projects. Federal acquisition procedures do not apply to temporary easements needed solely to perform work intended exclusively for the benefit of the property owner.

In general, permits and licenses, such as railroad permits, do not constitute real property acquisitions and, therefore, are not subject to the URA requirements. In distinguishing whether a permit/license is an easement, the subrecipient should carefully consider the following factors: the cost of the permit or license, the term of the permit or license, whether the license/permit is revocable at will, and/or whether the permit or license facilitates is a transfer of interest in the property. If there is a question of whether the permit or license should be considered an easement, subrecipient should seek legal counsel.

Eligible costs associated with a Buyout or Acquisition Program are limited to the actual costs for services used to complete the buyout of a home in a floodplain or floodway when the intent is to relocate the homeowner to a low-risk area outside of the floodplain/floodway. Property acquired through a buyout program must be dedicated and maintained in perpetuity as either open space, recreational land, as a component of floodplain management, or as a component of wetlands management. No new structure may be erected on property acquired, accepted, or from which a structure was removed under the buyout program other than: (1) a public facility that is open at all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (2) a rest room; or (3) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream or downstream, and that the local floodplain manager approves the structure, in writing, before the commencement of the construction of the structure.



Subrecipients without eminent domain authority fall under the requirements at 49 CFR 24.101 (b)(2).

8.4 Methods of Acquisition

To acquire real property a subrecipient must first determine whether the acquisition is voluntary or involuntary (see below description of determining whether an acquisition is voluntary or involuntary). Examples of common types of real property transactions are as follows:

- **Donation:** A transaction may be considered a donation only if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions;
- **Just Compensation Purchase:** The acquisition price is determined through a valuation process by a licensed appraiser. A real estate appraiser provides an objective and unbiased estimate or appraisal of the value of a property. The subrecipient notifies the owner in writing of the property's fair market value;
- **Negotiated Purchase:** Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement. For a buyout or acquisition housing program, this may include incentives to resettle beneficiaries. Subrecipient must ensure that the intent of the housing incentive is satisfied at award;
- **Condemnation/Eminent Domain:** A subrecipient should use condemnation only as a last resort and must request and obtain approval from GLO-CDR before commencing condemnation procedures. The acquiring subrecipient with eminent domain authority must determine which approach applies to the project before starting any acquisition activity. Once the subrecipient starts down the "voluntary" acquisition path- the use of eminent domain is not available. If an agency conducts its acquisition using the "involuntary" approach it is NOT committed to using eminent domain but may retain that option as last resort. Subrecipient must comply with Chapter 2206 of the Texas Government Code and all other applicable law. Any subrecipient considering condemnation must be aware of spending requirements associated with CDBG-DR funds. If a project requires condemnation the GLO-CDR must be notified immediately. See applicable Federal Register and your GLO-CDR Grant Manager for additional information.

8.5 Determining Voluntary or Involuntary

Acquisitions may be either voluntary or involuntary. The terms relate to whether the acquiring entity possesses the authority of eminent domain (condemnation) and if the transaction occurs because of the use or the intent to use that authority. The URA provides different protections to property owners depending on whether the acquisition is voluntary or involuntary. (See 49 CFR 24, Subpart B Real Property Acquisition).



For a housing Buyout or Acquisition program a subrecipient with eminent domain authority should work to consider a voluntary program over an involuntary program to minimize the costs and maximize the benefits of buyouts.

A subrecipient should design and implement buyout or acquisition programs using the following best practice principles:

- Using real property damage data, e.g. Flood Plain Administrator reports, FEMA Individual Assistance property loss, Flood Indentation Maps, Geographic Information System (GIS) software, repetitive loss data, substantial damage data, etc. allows the subrecipient the opportunity to consider how it will best acquire a sufficient number of contiguous properties to create a public amenity;
- With support data as discussed above, the subrecipient should identify and prioritize buyout areas in advance and create list of willing sellers and incorporate plans for a buyout into its hazard mitigation plans;
- Look for opportunities to connect to existing open space to satisfy the end use, which is to create a wetland, green space, park, etc.;
- Create program incentives and strategies for homeowners to participate in a buyout and relocate within the community;
- Work with local government entities to identify relocation areas outside the floodway, flood plain, DRRA in advance; and
- Partner with state or local parks systems to manage lands acquired as part of the buyout.

At no time is it permissible for a subrecipient to undertake the acquisition under threat or use its eminent domain authority if initial negotiations for a voluntary acquisition fail. If the subrecipient cannot ensure the applicable requirements of 49 CF R 24.101(b)(1)(i)-(iv) are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 C.F.R. Part 24 Subpart B.

VOLUNTARY

Acquiring Entities with Eminent Domain Authority—Voluntary Acquisition

Voluntary acquisitions are negotiated between the property owner and the subrecipient without the threat of eminent domain or condemnation. For subrecipient with the authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary (see 49 CFR 24.101(b)(1)(i)-(iv)):

- No specific site is needed and any one of several properties could be acquired for project purposes;
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits;



- The acquiring entity must inform the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement;
- The acquiring entity must inform the owner in writing of the property's fair market value using an appraiser (Housing Buyout or Acquisition Programs); and

Acquiring Entities without Eminent Domain Authority—Public Land Acquisition

Subrecipients do not have eminent domain authority to obtain publicly-owned land. Acquisitions of real property owned by federal, state, local governments, or political subdivisions (such as school districts or river authorities) are considered voluntary acquisitions. The subrecipient must still provide notification to the governmental entity regarding interest in the property, the lack of eminent domain to acquire the property, and the estimated fair market value of the property to be acquired before negotiating the sale, lease, or donation of the public land.

INVOLUNTARY

If an acquisition by an entity with eminent domain authority does not comply with the voluntary acquisition requirements described above (see 49 CFR 24.101(b)(1)(i) – (iv)), the acquisition is considered involuntary. Involuntary acquisition procedures must be followed for any acquisition of real property for programs and projects where there is federal financial assistance in any part of project costs.

8.6 Voluntary Acquisition Process

Step 1—Determine Property to be Acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired. For a housing Buyout or Acquisition program, see [8.5 Determining Voluntary or Involuntary](#).

Step 2—Submit Form A600 Initial Acquisition Report to GLO Grant Manager

Consult with the GLO Grant Manager for review of URA requirements and determination of acquisition levels.

Step 3—Determine Fair Market Value of the Property

The subrecipient may use a fair market estimate such as a tax valuation to determine value. For a housing Buyout or Acquisition program, an appraisal is required.

Step 4—Notify Owner of Property Rights



Voluntary acquisitions can occur only when the subrecipient lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain by giving specific written notice to the property owner.

The subrecipient must notify the owner in writing, prior to making a purchase offer, of the property's fair market value. The subrecipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached.

Optional: In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land. For Housing Buyouts or Acquisitions, the subrecipient may consider incentives as part of the negotiations. Incentives must be outlined in the subrecipient approved Buyouts or Acquisitions Guidelines.

Step 5—Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by GLO-CDR. If a significant environmental impact will occur, look at alternative sites.

Step 6—Determine Price or Donation

The owner may choose to donate the property or accept the fair market value of the property and has notified in Steps 3 and 4. If the donation and the fair market value are rejected by the owner, then the subrecipient may then negotiate with the property owner to reach an agreement. A best practice is to create a calculation that is applied to all properties to ensure that all are treated uniformly by the subrecipient. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for the subrecipient to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.



Step 7—Execute Agreement

The subrecipient and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations.

Step 8—Documentation Information

The subrecipient must prepare and submit to GLO-CDR all acquisition documentation for each parcel. Consult with the GLO Grant Manager for additional information.

8.7 Involuntary Acquisition Process

Step 1—Determine property to be acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property that must be acquired.

Step 2—Submit Form A600 Initial Acquisition Report to GLO Grant Manager for review and approval.

Subrecipient must consult with the GLO Grant Manager before pursuing any involuntary acquisition.

Step 3—Notify Owner of Property Rights

As soon as feasible, the subrecipient must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA and HUD regulations.

The subrecipient must provide the owner with the following, prior to making a purchase offer:

- Notice to Owner for Involuntary Acquisition (see [Resources](#)—Resource 8.4 at the end of this chapter and [49 CFR Part 24](#));
- “When a Public Agency Acquires Your Property”—This HUD booklet describes important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (see [Resources](#)—Resource 8.5); and
- “The Texas Landowner’s Bill of Rights”—This required informational booklet explains the rights and protections available to landowners (see [Resources](#)—Resource 8.6 at the end of this chapter, [§ 402.031, Texas Govt. Code](#), and [Property Code §21.0112](#)).

Optional: the owner can also be invited to donate the property. The acquiring entity may include the following documents:



- Form for the owner to complete accepting or declining the request to donate the land and/or
- Form on which the owner may waive the right to an appraisal of the land.

Step 4—Determine Appraised Value of the Property

An appraisal of fair market value is required for property acquired under involuntary procedures unless the following (see 49 CFR 24.102(c)(2)):

- If the property valuation is simple and the anticipated value of the proposed acquisition is \$10,000 or less, no formal appraisal is required. The subrecipient must prepare a waiver valuation and have a reasonable basis for the waiver valuation;
- If the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property.

If the value of the property exceeds \$10,000, but is less than \$25,000, GLO-CDR will consider written requests for waiver of appraisal. See your GLO Grant Manager for additional information.

The process of estimating value when an appraisal is determined to be unnecessary is considered a “waiver valuation.” Criteria for appraisals are addressed in 49 CFR 24.103.

The property owner, or the owner’s designated representative, must be invited to accompany the appraiser 49 CFR 24.102(c)(1). The subrecipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

Qualifications of Appraiser and Review Appraiser

The appraisal procedures require a qualified appraiser and a qualified review appraiser be procured (49 CFR 24.103 -104) in compliance with GLO-CDR professional services procurement procedures and applicable state procurement law. A contract appraiser hired to perform an appraisal, or a review appraisal must be a state licensed or certified real estate appraiser.

- Appraiser—The appraiser must provide an independently and impartially prepared opinion of the value of the defined property as of a specific date, supported by the presentation and analysis of relevant fair market information;
- Review Appraiser—Per 49 CFR 24.104, the review appraiser must examine the analysis of fair market information in appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103, and all other applicable requirements. The review appraiser may be a member of the staff but must



have adequate experience, education, training, and certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present fair market information to support a recommended value.

Step 5—Notification—Establishment and Offer of Just Compensation

Before the initiation of negotiations, the subrecipient must establish an amount believed to be just compensation to offer the property owner. The subrecipient must provide the just compensation value of the property to the owner in writing prior to making a purchase offer. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The just compensation determination statement and notification to the owner must be signed by subrecipient's local designated official and must include, at a minimum, the following:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;
- (2) A description and location identification of the property and the interest in the property to be acquired; and
- (3) An identification of any buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

(See generally 49 CFR 24.102(e)(1)-(3))

Step 6—Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by GLO-CDR.

Step 7—Determine Price

The owner may choose to donate the property or may accept the just compensation amount, in which case the parties may proceed with the execution of appropriate donation or sales documents in Step 8.



The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information believed to be relevant to the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase.

The purchase price may differ or exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement have failed and the subrecipient local official approves such settlement as reasonable, prudent, and in the public interest. Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement (see 49 C.F.R. 24.102(i)).

If negotiations are unsuccessful and the use of eminent domain has been approved by GLO-CDR, the subrecipient may determine this is the next course of action. Please refer to your local attorney and local officials for specific guidance.

Step 8—Execute Agreement

The subrecipient and the property owner must execute a sales or donation agreement. The deed or easement must be recorded as required by State regulations.

Step 9—Report Acquisition Parcel Information

The subrecipient must prepare and submit to GLO-CDR information regarding each parcel. See your GLO Grant Manager for additional information.

8.8 Relocation

It is the GLO's goal to minimize the displacement of persons and/or entities involved in or affected by disaster-recovery related activities. To do so, the GLO will follow its Residential Anti-displacement and Relocation Assistance Plan ("RARAP"). Subrecipients should consider procuring a Uniform Relocation and Real Property Acquisition specialist to help navigate the relocation of displaced persons.

The GLO-CDR will take the following steps and require subrecipients and developers to minimize the direct and indirect displacement of persons from their homes:

- Plan construction activities to allow tenants to remain in their units as long as possible, by rehabilitating empty units or buildings first;
- Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement;



- Adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods;
- Adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas; or
- Target only those properties deemed essential to the need or success of the project. However, if displacement is unavoidable, relocation assistance may be available to those displaced.

The relocation assistance requirements at section 104(d)(2)(A) of the Housing and Community Development Act (HCDA) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the notice for activities related to disaster recovery.

Note: The waiver of the HCDA provisions listed above should be verified in the applicable Federal Register for each allocation of funding.

Relocation assistance may be made available on a case-by-case basis and only as approved by the GLO-CDR. Relocation may be needed for displaced persons. URA assistance is generally required if a person is displaced, is a tenant in good standing, and meets set eligibility criteria such as citizenship, residency at the time of the declared disaster, and more.

Relocation Steps

Step 1—Send General Information Notice and HUD Brochure

At the time of the acquisition Notice of Intent discussed earlier in this chapter, tenants should be mailed a General Information Notice (GIN) and the HUD “When a Public Agency Acquires Your Property” brochure. This brochure describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Owner-occupants and landowners should also be provided with a copy of the “The Texas Landowner’s Bill of Rights.” This required informational booklet explains the rights and protections available to landowners. (See § 402.031, Texas Govt. Code and Property Code §21.0112).

Step 2—Schedule Intake and Confirm Eligibility

An intake meeting or event should be scheduled with all affected tenants. A notification of relocation benefits eligibility is provided at this meeting. This is an opportunity for the tenant to learn about the process, ask questions and to submit necessary income verification



information. Tenants should receive a written notification of their eligibility for benefits after it is confirmed they will be displaced and after other eligibility items have been confirmed (living in property before NOI, citizenship/legal residency, etc.) The subrecipient should determine current occupancy and conduct tenant interviews.

Step 3—Certify Income and Determine National Objective

In addition to completing eligibility-related documentation, the tenant household must complete an income certification so that national objective can be determined (LMI vs. urgent need).

Step 4—Initiate Negotiations

Once eligibility and national objective are determined, the tenant file remains “on hold” pending the initiation of negotiations (ION). In a buyout/acquisition program, this is generally used as the Contract of Sale date (when the buyer and seller have entered into an agreement for the property to be purchased).

Step 5—Identify Comparable Dwellings

At this time, comparable replacement dwellings that are available for rent are selected by a real estate professional. Comparable dwellings should meet Decent Safe and Sanitary (DSS) and Housing Quality Standards (“HQS”) so that displaced persons are relocated to safe and sanitary housing. Comparable replacement dwellings cannot be in a Special Flood Hazard Area (“SFHA”). The comparable dwellings are presented on HUD Form 40061 and a “most comparable dwelling” is chosen based on objective criteria. Benefits are calculated based on the rent of the “most comparable dwelling” and estimated utilities of the displacement dwelling and “most comparable dwelling.” Subrecipients must develop a methodology for determining estimated monthly utilities at the displacement dwelling and at the replacement dwelling. The simplest way of doing this is looking at the utility allowance worksheets for local housing authorities or Section 8 agencies.

Step 6—Send Notice of Eligibility and 90-day Notice

Upon subrecipient approval of the HUD Form 40061, the tenant is mailed a Notice of Eligibility (“NOE”) and a 90-Day Notice. The Notice of Eligibility informs the tenant that they are eligible for relocation benefits, provides the maximum amount of assistance the tenant is eligible for, and indicates that the tenant has 90 days to relocate. The NOE also explains that the tenant has the right to appeal the determination of the most comparable dwelling. It is critical that



tenants are informed in writing that they may appeal the determination of their relocation benefits based on the comparable dwelling selected in the 40061.

Step 7—Relocate Tenant

The tenant has 90 days to relocate to a new dwelling. The tenant can choose any dwelling they want; they are not required to select the most comparable dwelling or any of the comparable dwellings noted on the HUD Form 40061.

Step 8—Inspect New Tenant Unit

When the tenant moves to a new unit, the unit is inspected to ensure it meets DSS/HQS standards. The subrecipient must also verify that the unit is not located in a SFHA. The unit must not be in a SFHA and it must meet DSS/HQS standards for the tenant to receive benefits.

Step 9—Determine Tenant Eligibility for and Amount of Assistance

If the tenant is found to be eligible for benefits, HUD Forms 40054 and 40058 are completed. These forms calculate the amount of assistance the tenant will receive. HUD Form 40054 pays the tenant's moving expenses. HUD Form 40058 pays relocation expenses equivalent to 42 months of the tenant's rent increase *or 42 months of any monthly rent amount over 30 percent of the tenant's monthly income*. The tenant signs the HUD Forms 40054 and 40058 along with an authorized party from the subrecipient.

Step 10—Disburse Assistance Payment

Once an amount is determined, the moving expense payment to the tenant is disbursed. The rental assistance payment is made in no less than 3 parts over a 42-month period.

Additional information on required forms is located on the GLO-CDR Buyout and Acquisition Program Resources Page. See [Resources](#)—Resource 8.7 at the end of this chapter.

8.9 Acquisition and Other Program Requirements

Procurement: Necessary surveyors, appraisers, title companies, URA vendors and other professionals whose services are required for acquisition and URA compliance must be procured under GLO-CDR rules for procurement of professional services.

Environmental Review: Environmental reviews must be completed prior to completion of acquisition activities.



Closing Costs (Buyouts or Acquisition of Real Property): All costs of closing, recordation, including legal fees and costs associated with performing appraisals, surveys, and title reviews may be paid by the Program using CDBG-DR funds.

Release of Funds:

- No CDBG-DR construction funds will be released until property acquisition is complete (for infrastructure related projects). Environmental reviews must be completed prior to executing a commitment to acquire any property other than through a contract option as described in section 8.2 and at 24 CFR 58.22(d).
- All acquisition activities must be fully documented, completed, executed, and recorded, prior to the execution of any related construction contracts.
- If acquisition is required additional documentation may be required before construction funds may be released. See your GLO Grant Manager for additional information.

Subrecipient Agreement Modifications and Amendments: Addition or deletion of acquisition activities to the Subrecipient Agreement must be approved by GLO-CDR.

Recordkeeping: The subrecipient is responsible for demonstrating compliance with URA requirements, regardless of who actually performs the duties. All records and notices and their date of delivery must be maintained locally and in the GLO system of record or GLO and HUD monitoring purposes. For specific documents, contact the Grant Manager.

- Documents, as applicable, must be submitted to GLO-CDR and retained in the local file.
- All mailed communications should be “USPS Certified, Return Receipt Requested” or similar, or hand delivered with a notation on a copy by a witness to the delivery. The subrecipient records must contain the complete record and demonstrate compliance.

Private to private acquisition of Real Property:

- **URA**—If an acquisition is a private to private acquisition of real property, the URA does not apply. The private development is considered separate; therefore, acquisition by a private entity from another private entity entirely for private use is not considered to be subject to URA. However, if CDBG-DR funds are invested in public infrastructure to support that private enterprise, any acquisition with respect to that public infrastructure is subject to URA.
- **Environmental**—If the private to private transfer of property would not have occurred if not for the federal project, then the real property must pass environmental clearance before the acquisition (a choice limiting action) occurs.



8.10 Buyout or Acquisition Housing Programs

CDBG-DR funds can be used to acquire residential properties, or adjacent vacant properties, in a target area with the intent to demolish the structures and create park amenities, open space, or flood storage/overflow areas. Buyout programs are especially effective in communities that have endured multiple disasters in the same neighborhood in the recent past or sustained severe damage where there is high risk of additional disasters. Buyouts allow communities to strategically retreat from their highest-risk areas, protecting life and property while reducing the need for local, state, and federal resources in the future.

GLO-CDR and HUD encourage subrecipients to use buyouts strategically as a means of acquiring contiguous parcels of land for uses identified above. To the maximum extent practicable, subrecipients should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program. Subrecipients should evaluate community needs before undertaking a buyout or acquisition program. Buyout programs require a community commitment to demolish structures on purchased land while establishing perpetual restrictions on future development. In contrast, acquisitions allow for a community to develop new resilient housing on purchased lots.

GLO-CDR encourages subrecipients implementing housing buyout and/or acquisition programs to assign homeowners individual case managers to assist them throughout the process. Case managers are responsible for assisting the program applicants with application intake, documentation requirements, project updates, and should serve as the homeowner's primary point of contact. Case managers should strive to provide a positive customer service experience to participating homeowners, especially low-income or otherwise vulnerable populations. Subrecipients should also develop a plan for assisting households with limited English proficiency, including (but not limited to) bilingual case management staff and translated versions of program documents.

Housing buyout and acquisition programs funded through CDBG must include applicant disclosures of storm-related benefits already received. Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG assistance.



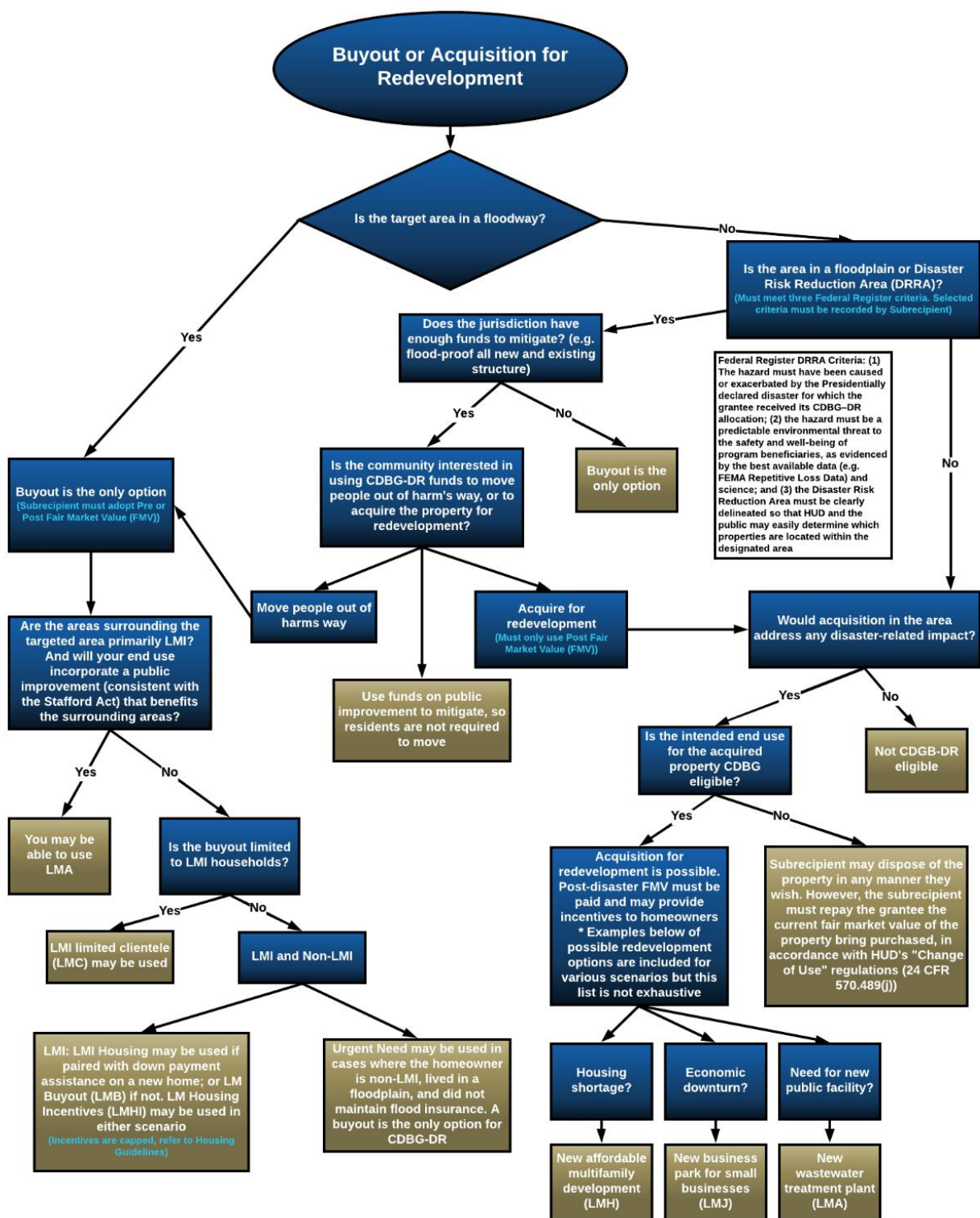
Housing incentives and relocation incentives are often required so that applicants have the financial resources they need to relocate to replacement housing outside of the floodplain or DRRA. Housing incentives can generally be paid as down-payment assistance on the applicant's purchase of a new home, or as an additional benefit to applicants that purchased new homes after they were displaced by the disaster event. Subrecipients may also use housing incentives as a method of keeping its displaced residents local, as to not disrupt local or school tax bases. For example, a County could establish a housing incentive with an eligibility component that requires property owners to purchase a new home within that same County to qualify for the incentive money. Ultimately, incentives should be utilized to help ease the financial burden of moving and buying a new home for individuals and families that are displaced.

The GLO-CDR considers funding buyout activities as a viable option to reduce risk from future flooding of properties location in a floodplain, floodway or within a Disaster Risk Reduction Area (DRRA) by converting the property to open space, recreational, or floodplain and wetlands uses. A DRRA is an area which is located outside of floodways or floodplains that is established by the subrecipient to reducing risks from the hazard that led to its designation in accordance with the buyout requirements of the approved action plan and Federal Register Notices. For buyout, the property acquired will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreation, or floodplain and wetlands management practices. This contrasts with the previously discussed types of acquisition, where the property may be used for certain redevelopment activities as long as they tie to ensuring resiliency and to mitigating the impact of future disasters.

A property can be designated as a DRRA if it meets, at a minimum, the following criteria:

- The hazard must have been caused or exacerbated by the presidentially declared disaster under which the subrecipient received its CDBG-DR allocation;
- The hazard must be a predictable environmental threat to the safety and well-being of Program beneficiaries, as evidenced by the best available data and science;
- The Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the Disaster Risk Reduction Area; and
- In carrying out acquisition activities, the subrecipient must ensure they are in compliance with their long-term redevelopment plans.

The following decision tree walks through the questions a subrecipient will need to answer when considering whether buyout or acquisition activities are appropriate for potential redevelopment. For more information about buyout activities, please contact your GLO Grant Manager.





An appraisal is required for buyout activities but subrecipient may set as a policy whether to use a pre-disaster appraisal or a post disaster appraised value. For acquisition of real property, the subrecipient must only use the post disaster fair market value. More information regarding buyout programs is available on the [GLO-CDR website](#).

8.11 Best Practices

Subrecipients should seek to:

- Design a program that best suits the community's long-term resiliency needs.
- Use real property damage data, e.g., Flood Plain Administrator reports, FEMA Individual Assistance property loss, Flood Indentation Maps, Geographic Information System (GIS) software, etc. which will allow the subrecipient the opportunity to consider how it will best acquire a sufficient number of contiguous properties to create a public amenity.
- Identify and prioritize buyout areas with the data available in advance and create list of willing sellers and incorporate plans for a buyout into its hazard mitigation plans.
- Look for opportunities to connect to existing open space to satisfy the end use, which is to create a wetland, green space, park, etc.
- Create program incentives and strategies for homeowners to participate in a buyout and relocate within the community.
- Work with local government entities to identify relocation areas outside the floodway, flood plain, DRRRA in advance.
- Partner with state or local parks systems to manage lands acquired as part of the buyout.
- Determine at the beginning of the decision-making process if involuntary is the best course of action, so the proper procedures and notifications are performed. Failure to follow the proper procedure for the type of acquisition may result in disallowed costs or other penalties.
- Begin title research early in the acquisition process to correct title issues that may cause delays.
- Consult with GLO-CDR to determine which activities may occur prior to completing acquisition when a project includes multiple activities and only some of the activities require acquisition.
- Use HUD's Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018) for Harvey Grants are provided below.



83 FR 5844 Reference Guide for Buyouts and Acquisitions

Updated March 13, 2019

The summary below is based on HUD's *Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018)*. It includes only those requirements specifically applicable to buyouts and acquisitions for redevelopment. All requirements contained within HUD regulations (24 CFR), 2 CFR 200, Federal Register Notices, and HUD CPD notices related to this allocation also apply. We strongly recommend that subrecipient understand all of these requirements and not just those listed below, when undertaking activities with CDBG-DR funding.

Full document here: <https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf>

Requirement Topic	Requirement Summary	Page
One-for-Once Replacement Housing, Relocation and Real Property Acquisition	<p>CDBG-DR activities and projects are subject to URA and section 104(d) of the HCD Act. HUD is waiving:</p> <p>104(d) and exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" that must be defined in the grantee's action plan;</p> <p>Relocation assistance requirements at section 104(d)(2)(a) of HCD Act and 24 CFR 42.350 are waived to the extent they differ with 49 CFR part 24 for activities related to disaster recovery providing that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months;</p> <p>Arm's length voluntary purchase: requirements at 49 CFR 24.101 (b)(2)(i) and (ii) are waived for persons using funds that does not have the power of eminent domain in connection with the purchase and occupancy of a principal residence by that person. Tenants living in the property may be eligible for relocation assistance;</p> <p>Optional relocation policies: Regulations at 24 CFR 570.606(d) is waived and grantees, or their subrecipient, receiving CDBG-DR funds may establish optional relocation policies;</p> <p>Waiver of section 414 of the Stafford Act: to the extent that is applied to acquisition, rehabilitation or demolitions of real property for a project beginning more than one year after the disaster to simplify the administration of the program by the waiver does not apply to persons that meet the occupancy requirement to receive replacement housing.</p>	5858-5859
Down-payment Assistance	Waive 42 U.S.C. 5305(a)(24)(A) and (D) to allow: (1) homeownership assistance to households earning up to 120% of AMI but only households	5861



	up to 80% qualify as meeting LMI persons benefit national objective; (2) down payment assistance up to 100%	
Acquisition of real property: flood and other buyouts	The term “buyouts” refers to acquisition of properties located in a floodway or floodplain intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas (defined in next section). Grantees are encouraged to use buyouts strategically, acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices and should avoid circumstances in which parcels that could not be acquired to remain alongside parcels acquired through the buyout program. Real property acquisitions with CDBG-DR funding are subject to URA.	5863
	1. Clarification of “Buyout” and “Real Property Acquisition Activities” In a buyout program, grantees have the discretions to determine the appropriate valuation method, including paying either pre-disaster or post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, making the seller a CDBG-DR beneficiary. This may have implications for a DOB calculation. Seller is not considered a beneficiary if they receive a post-disaster FMV. Only “buyouts” are subject to the land use restrictions. The key factor in determining an acquisition is a “buyout” is if the intent is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction area for which a grantee has criteria in its policies and procedures that include the following requirements:	5863
	1a. Hazard must have been caused or exacerbated by the Presidentially declared disaster;	
	1b. Hazard must be a predictable environment threat to safety and well-being of program beneficiaries; and	
	1c. Area must be clearly delineated so that it is easy to determine properties located within the area. Grantee may only redevelop a property not acquired through a “buyout” program.	
	2. Buyout Requirements:	5863-
	2a. Any property acquired, accepted, or from which a structure will be removed and will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.	5864
	2b. No new structure will be erected on property other than: (a) a public facility open on all sides and functionally related to a	



	designated open space; (b) a rest room; or (c) a flood control structure.	
	2c. After receipt of the assistance, no subsequent application for additional disaster assistance for any purpose will be made to any federal entity in perpetuity	
	2d. Grantees have the discretion to determine a valuation method but must uniformly apply whichever valuation method it chooses.	
	2e. All buyout activities must be classified using the “buyout” activity type in the DRGR system.	
	2f. State grantee implementing a buyout program or activity must consult with affected local governments.	
	2g. To demonstrate that a buyout meets the LMH national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria. 42 U.S.C. 5305(c)(3) provides that any assisted acquisition of property to provide housing shall be considered to benefit persons of low- and moderate-income will, upon completion, be occupied by such persons. State CDBG regulations at 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity providing or improving permanent residential structures that will be occupied by LMI households. A buyout program does not result in an LMI household occupying a residential structure and doesn’t meet the LMH national objective. Buyout programs that assist LMI persons can be structured in one of the following ways: (a) combines the acquisition with another direct benefit-LMI housing activity, such as down payment assistance-that results in occupancy; (b) meets the national objective low- and moderate- income area (LMA) benefit criteria provided that the grantee can document that the properties acquired will benefit all residents in a defined service area where at least 51 percent of the residents are LMI persons; or (c) The program meet the criteria for the LMI limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity’s benefits are available to all residents of the area, if it restricts buyout program benefit to the LMI sellers by providing pre-disaster valuation uniformly to participants. (d) The program meets the criteria for the Low/Mod Buyout (LMB) or LMHI national objectives for buyouts and the use of housing incentives as authorized in the Department’s August 7, 2017 Federal Register notice at 82 FR 36285 and described in paragraph B.38 of section VI in this notice.	
	3. Redevelopment of Acquired Properties:	5864



	3a. Grantees may redevelop an acquired property not acquired through a buyout program and the purchase price is based on the property's post-disaster value. Grantees may provide relocation assistance or housing incentives to the owner if the property is purchased through voluntary acquisition, and the owner's need for additional assistance is documented.	
	3b. In carrying out acquisition activities, grantees must comply with their long-term redevelopment plans.	
Additional LMI national objective criteria for buyouts and housing incentives	HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. CDBG regulations for LMI national objective are activities meeting 4 established criteria in 24 CFR 570.208(a)(1)-(4) and 570.483(b)(1)-(4) and buyout activity in 80 FR 72102. HUD is providing grantees with an additional method to demonstrate how LMI households benefit when buyouts and housing incentives are used in long term recovery. HUD is establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-DR funding provided pursuant to this notice. To meet the new LMB and LMHI national objectives, grantees must demonstrate the following:	5864
	1. CDBG-DR funds have been provided for an eligible activity that benefits LMI households supporting their move from high risk areas. The following activities shall qualify, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR AND CDBG-MIT funds:	
	1a. Low/Mod Buyout (LMB) When CDBG-DR funds are used for a buyout to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.	
	1b. Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.	
	2. Activities that meet the above criteria will be considered to benefit low- and moderate- income persons and count towards the calculation of a CDBG-DR grantee's overall LMI benefit.	



8.12 Resources

The GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see www.recovery.texas.gov for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	URL
Resource 8.1	GLO Regulatory Information: Uniform Relocation Assistance (URA)	https://recovery.texas.gov/grant-administration/technical-assistance/index.html
Resource 8.2	GLO Buyout or Acquisition Guidelines Checklist	https://recovery.texas.gov/files/local-buyout-acquisition/buyout-and-acquisition-guidelines-checklist.pdf
Resource 8.3	HUD Exchange: Real Estate Acquisition and Relocation Guidelines	https://www.hudexchange.info/programs/relocation/
Resource 8.4	Notice to Owner Involuntary Acquisition (HUD Appendix 30)	https://recovery.texas.gov/files/resources/infrastructure/s4-hud-appendix-30---guideform---notice-to-owner_involuntary-acquisition.docx
Resource 8.5	"When a Public Agency Acquires Your Property" (HUD Booklet)	https://www.hud.gov/sites/documents/1041cpd.doc
Resource 8.6	The Texas Landowner's Bill of Rights	https://texas.public.law/statutes/tex._gov't_code_section_402.031
Resource 8.7	GLO-CDR Buyout and Acquisition Program Resources	https://recovery.texas.gov/grant-administration/grant-implementation/buyouts-and-acquisitions/index.html

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Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to ImplementationManual.glo@recovery.texas.gov.